BEFORE THE FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C.

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In the Matter of	)	
	)	
1998 Biennial Regulatory Review	)	MM Docket No. 98-43
Streamlining of Mass Media Applications, Rules and Process	)	

To: The Commission

PETITION FOR RECONSIDERATION

David Tillotson, a commentator in this rule making proceeding, hereby petitions for reconsideration of the following two aspects of the ***Report and Order*** FCC 98-281 released in the proceeding on November 25, 1998:

1. The requirement the contour maps be placed in a station's public file and submitted to the Commission in connection with all assignment applications involving multiple ownership certifications.

2. The Commission's decision to conduct post-grant audits of 5% of all applications that it grants.

A. Contour Maps

The Commission's decision to require all applicants for assignment or transfers of licenses involving multiple ownership certifications to submit "contour overlap maps" imposes a new and unreasonable burden and expense on any applicants who can certify compliance with the multiple ownership rules without reference to such maps. Moreover, contrary to the Commission's statement at paragraph 45 of the *Report and Order* that "[n]o commenter challenges our assumption that most applicants proposing to own multiple radio stations interests in an area would need to . . . prepare contour overlap maps to accurately respond to the related

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certification questions," Petitioner did challenge that assumption. At pp. 8 - 9 of Petitioner's comments he specifically proposed that "applicants who can demonstrate compliance with the multiple ownership rules without reference to contour maps" should be exempted "from any obligation to prepare contour maps relating to multiple ownership."

In many if not most situations an applicant proposing to own more than one station in the same class in a local market can reliably certify compliance with the multiple ownership rules without reference to contour overlap maps. For example, an applicant seeking to acquire a second FM station in a community can certify compliance if there are four or more stations licensed to the community without reference to any coverage map. If the applicant were seeking to acquire two FM stations to bring its total ownership in the community to three, the applicant could certify compliance without reference to a map if there were six or more stations licenses to the community. Similarly, an applicant with an FM station in Community A seeking to acquire an FM station in Community B can certify compliance without reference to coverage maps if there are a total of four stations, in the aggregate, licensed to Communities A and B. These are examples of the simplest situations in which not map is needed to demonstrate compliance with the multiple ownership rules, and where under the current processing rules an applicant would not be required to submit a map in connection with its multiple ownership compliance showing. The examples can be extended to

situations involving multiple stations and multiple communities, as a multiple ownership showing can be made without reference to coverage maps as long as the aggregate number of stations licensed to the communities to which the stations that are to be commonly owned are licensed is sufficient to establish compliance with the multiple ownership rules.

Contour overlap maps are not cheap. The maps for a simple showing involving only a few stations cost several hundred dollars. Maps showing the contours of many stations cost in excess of $500. Applicants that can readily demonstrate compliance with the multiple ownership rules without reference to coverage maps are not currently required to incur these unnecessary costs, and they should not be required to do so as part of the new, "streamlined" application procedures. If the Commission deems it essential that the public have an opportunity to review the bases on which applicants certify compliance with the multiple ownership rules, it should permit any applicant who is able to certify compliance without reference to a coverage overlap map to place a brief explanation of the basis on which it certified compliance in lieu of a coverage map in its public file and to file that explanation with the Commission.

B. Post Grant Audits

The Commission's decision to conduct post-grant audits of 5% of the applications that it processes raises serious problems concerning when a Commission action granting an application will become a "final order" in the sense that it is no longer subject

to further administrative or judicial reconsideration or review" and when applicants and their attorneys will know that the action has become a "final order."

Under the Commission's current rules and procedures, an action granting an application becomes a "final order" if no petition for reconsideration or review of the action is filed within 30 days of the public notice of the action and if, in the case of a grant by staff action, the Commission has not acted to review or set aside the action on its own motion within 40 days of the public notice. Lenders and equity investors typically require legal opinions to the effect that an action granting an application has become a "final order" before they will advance funds for an acquisition or for construction of a new station. By adopting procedures which subject 5% of all applications to post-grant audits, the Commission has cast a long shadow across the concept of "finality," since, by reserving the right to impose sanctions in connection with applications after the actions granting the applications has become a "final order" as well as the right to designate parties who have received licenses and permits pursuant to actions that have become "final orders," the Commission has made it impossible for attorneys to give unqualified opinions that Commission actions with respect to applications subject to a random post-grant audit are "final orders." In the real world, it is unlikely that lending institutions and investors will advance funds based upon qualified opinions regarding "finality" which disclose, as they

must, that, notwithstanding the fact that an action has become a "final order," the application that led to the action that has become a "final order" may be subjected to a random audit and, if such an audit is conducted and problems are found, the Commission may impose severe sanctions on the recipient of the grant and may even designated it for a revocation hearing.

The "finality" problem created by the risk of post-grant audits can be substantially ameliorated by the Commission setting up its post-grant audit procedures to ensure that (i) no application will be selected for a post-grant audit after the date that the action granting the application becomes a "final order" in that it is no longer subject to administrative or judicial reconsideration or review and (ii) no application will be subject to a post-grant audit unless a public notice reflecting that the application has been selected for a post-grant audit has been published prior to such "final order" date. However, while such procedures would eliminate the "finality" problem for those applications not selected for post-granted audit, the 5% of the applicants who are selected would still face the real problem that the actions granting their applications would not be truly "final" until the audit is completed and they receive confirmation that the audit did not disclose any problems warranting the imposition of sanctions or designation for a revocation hearing. Until an applicant selected for an audit receives such a clean bill of health, it is unlikely that the applicant's lenders and/or investors will advance funds for the

acquisition or construction of the station(s) that were the subject of the application being audited.

Since post-grant audits raise serious "finality" problems which can be ameliorated, but not eliminated, by setting up procedures to ensure that 95% of the applications that will not be audited can obtain unequivocal opinions that the actions granting their applications are "final orders," it is suggested that the Commission eliminate post-grant audits and conduct all audits pre-grant and thereby eliminate the cloud that post-grant audits will cast on the well established concept of "finality". As the Commission resources that will be needed to audit a total of 10% of all applications will be the same whether 5% of the audits are pre-grant and 5% are post grant or all 10% are pre-grant, eliminating shifting all of the proposed random audits to pre-grant will not in any way increase the workload of the Commission.

Respectfully submitted,

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Dated: December 17, 1998